

(2) *Basic human needs.* Basic human needs are defined as those requirements essential to individual well-being: health, food, clothing, shelter, and education. These needs are considered to extend beyond those of an emergency nature and those that meet direct needs for mere subsistence.

(3) *Eligible donors.* Eligible donors are U.S. charitable organizations that have an established record of involvement in donative programs and experience in maintaining and verifying a system of distribution to ensure delivery of commodities and software to the intended beneficiaries. Eligible distribution arrangements may consist of any one or more of the following:

(i) A permanent staff maintained in the recipient country to monitor the receipt and distribution of the donations to the intended beneficiaries;

(ii) Periodic spot-checks in the recipient country by members of the exporter's staff; or

(iii) An agreement to utilize the services of a charitable organization that has a monitoring system in place.

(4) *Donations.* To qualify for export under the provisions of this paragraph (b), the items must be provided free of charge to the beneficiary. The payment by the beneficiary, however, of normal handling charges or fees levied by the importing country (e.g., import duties, taxes, etc.) is not considered to be a cost to the beneficiary for purposes of this paragraph (b).

(5) *Ineligible commodities and software.* The following commodities and software are not eligible:

(i) Commodities and software controlled for national security, chemical or biological weapons, and nuclear non-proliferation, missile technology or crime control reasons (see Supplement No. 1 to part 774 of the EAR);

(ii) Exports for large-scale projects of the kind associated with comprehensive economic growth, such as dams and hydroelectric plants; or

(iii) Exports to Cuba of medical items excluded by § 746.2(b)(1) of the EAR.

(6) *Eligible items.* Eligible commodities and software are those listed in Supplement No. 2 to part 740.

(7) *Additional recordkeeping requirements.* In addition to the recordkeeping requirements in part 762 of the EAR,

donors must keep records containing the following information:

(i) The donor organization's identity and past experience as an exporter of goods to meet basic human needs;

(ii) Past and current countries to which the donative programs have been and are being directed, with particular reference to donative programs in embargoed destinations;

(iii) Types of projects and commodities involved in the donative programs;

(iv) Specific class(es) of beneficiaries of particular donated goods intended to be exported under this License Exception; and

(v) Information concerning the source of funding for the donative programs and the projected annual value of exports of humanitarian donations.

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#### § 740.13 Technology and software—unrestricted (TSU).

This license exception authorizes exports and reexports of operation technology and software; sales technology and software; software updates (bug fixes); “mass market” software subject to the General Software Note; and encryption source code (and corresponding object code) that would be considered publicly available under § 734.3(b)(3) of the EAR. Note that encryption software subject to the EAR is not subject to the General Software Note (see paragraph (d)(2) of this section).

(a) *Operation technology and software—(1) Scope.* The provisions of paragraph (a) permit exports and reexports of operation technology and software. “Operation technology” is the minimum technology necessary for the installation, operation, maintenance (checking), or repair of those commodities or software that are lawfully exported or reexported under a license, a License Exception, or NLR. The “minimum necessary” operation technology does not include technology for development or production and includes use

technology only to the extent required to ensure safe and efficient use of the commodity or software. Individual entries in the software and technology subcategories of the CCL may further restrict the export or reexport of operation technology. This paragraph (a) authorizes training, provided the training is limited to the operation, maintenance and repair technology identified in this paragraph.

(2) *Provisions and destinations*—(i) *Provisions*. Operation software may be exported or reexported provided that both of the following conditions are met:

(A) The operation software is the minimum necessary to operate equipment authorized for export or reexport; and

(B) The operation software is in object code.

(ii) *Destinations*. Operation software and technology may be exported or reexported to any destination to which the equipment for which it is required has been or is being legally exported or reexported.

(b) *Sales technology*—(1) *Scope*. The provisions of paragraph (b) authorize exports and reexports of sales technology. “Sales technology” is data supporting a prospective or actual quotation, bid, or offer to sell, lease, or otherwise supply any item.

(2) *Provisions and destinations*—(i) *Provisions*. Sales technology may be exported or reexported provided that:

(A) The technology is a type customarily transmitted with a prospective or actual quotation, bid, or offer in accordance with established business practice; and

(B) Neither the export nor the reexport will disclose the detailed design, production, or manufacture technology, or the means of reconstruction, of either the quoted item or its product. The purpose of this limitation is to prevent disclosure of technology so detailed that the consignee could reduce the technology to production.

(ii) *Destinations*. Sales technology may be exported or reexported to any destination.

NOTE: Neither this section nor its use means that the U.S. Government intends, or is committed, to approve a license application for any commodity, plant, software, or

technology that may be the subject of the transaction to which such quotation, bid, or offer relates. Exporters are advised to include in any quotations, bids, or offers, and in any contracts entered into pursuant to such quotations, bids, or offers, a provision relieving themselves of liability in the event that a license (when required) is not approved by the Bureau of Industry and Security.

(c) *Software updates*. The provisions of paragraph (c) authorize exports and reexports of software updates that are intended for and are limited to correction of errors (“fixes” to “bugs”) in software lawfully exported or reexported (original software). Such software updates may be exported or reexported only to the same consignee to whom the original software was exported or reexported, and such software updates may not enhance the functional capacities of the original software. Such software updates may be exported or reexported to any destination to which the software for which they are required has been legally exported or reexported.

(d) *General Software Note: mass market software*—(1) *Scope*. The provisions of paragraph (d) authorize exports and reexports of mass market software subject to the General Software Note (see Supplement No. 2 to part 774 of the EAR; also referenced in this section).<sup>2</sup>

(2) *Exclusions*. The provisions of this paragraph (d) are not available for encryption software controlled for “EI” reasons under ECCN 5D002 or for encryption software with symmetric key length exceeding 64-bits that qualifies as mass market encryption software under the criteria in the Cryptography Note (Note 3) of Category 5, Part 2, of the Commerce Control List (Supplement No. 1 to Part 774 of the EAR). (Once such mass market encryption software has been reviewed by BIS and released from “EI” and “NS” controls pursuant to § 742.15(b) of the EAR, it is controlled under ECCN 5D992.c and is thus outside the scope of License Exception TSU.) See § 742.15(b) of the EAR

<sup>2</sup>Pursuant to 15 CFR § 30.37(f) of the Foreign Trade Regulations (FTR), Electronic Export Information (EEI) via the Automated Export System (AES) is required for mass-market software.

for exports and reexports of mass market encryption products controlled under ECCN 5D992.c.

(3) *Provisions and destinations*—(i) *Destinations*. Mass market software is available to all destinations except destinations in Country Group E:1 (see Supplement No. 1 to this part).

(ii) *Provisions*. Mass market treatment is available for software that is generally available to the public by being:

(A) Sold from stock at retail selling points, without restriction, by means of:

- (1) Over the counter transactions;
- (2) Mail order transactions; or
- (3) Telephone call transactions; and

(B) Designed for installation by the user without further substantial support by the supplier.

(e) *Publicly available encryption source code*—(1) *Scope and eligibility*. Subject to the notification requirements of paragraph (e)(3) of this section, this paragraph (e) authorizes exports and reexports of publicly available encryption source code classified under ECCN 5D002 that is subject to the EAR (see § 734.3(b)(3) of the EAR). Such source code is eligible for License Exception TSU under this paragraph (e) even if it is subject to an express agreement for the payment of a licensing fee or royalty for commercial production or sale of any product developed using the source code.

(2) *Restrictions*. This paragraph (e) does not authorize:

(i) Export or reexport of any encryption software classified under ECCN 5D002 that does not meet the requirements of paragraph (e)(1), even if the software incorporates or is specially designed to use other encryption software that meets the requirements of paragraph (e)(1) of this section; or

(ii) Any knowing export or reexport to a country listed in Country Group E:1 in Supplement No. 1 to part 740 of the EAR.

(3) *Notification requirement*. You must notify BIS and the ENC Encryption Request Coordinator via e-mail of the Internet location (e.g., URL or Internet address) of the publicly available encryption source code or provide each of them a copy of the publicly available encryption source code. If you up-

date or modify the source code, you must also provide additional copies to each of them each time the cryptographic functionality of the source code is updated or modified. In addition, if you posted the source code on the Internet, you must notify BIS and the ENC Encryption Request Coordinator each time the Internet location is changed, but you are not required to notify them of updates or modifications made to the encryption source code at the previously notified location. In all instances, submit the notification or copy to [crypt@bis.doc.gov](mailto:crypt@bis.doc.gov) and to [enc@nsa.gov](mailto:enc@nsa.gov).

NOTE TO PARAGRAPH (e): Posting encryption source code on the Internet (e.g., FTP or World Wide Web site) where it may be downloaded by anyone neither establishes “knowledge” of a prohibited export or reexport for purposes of this paragraph, nor triggers any “red flags” imposing a duty to inquire under the “Know Your Customer” guidance provided in Supplement No. 3 to part 732 of the EAR. Publicly available encryption object code software classified under ECCN 5D002 is not subject to the EAR when the corresponding source code meets the criteria specified in this paragraph (e), see § 734.3(b)(3) of the EAR.

(f) *Release of technology and source code in the U.S. by U.S. universities to their bona fide and full time regular employees*—(1) *Scope*. This paragraph authorizes the release in the United States of “technology” and source code that is subject to the EAR by U.S. universities to foreign nationals who are their bona fide and full time regular employees.

(2) *Eligible foreign nationals (i.e., bona fide and full time regular employees of U.S. universities)*. This exception is only available if:

(i) The employee’s permanent residence throughout the period of employment is in the U.S.;

(ii) The employee is not a national of a destination listed in Country Group D:5 (see supplement No. 1 to part 740 of the EAR); and

(iii) The university informs the individual in writing that the “technology” or source code may not be transferred to other foreign nationals without prior U.S. Government authorization. The obligation not to transfer technology extends beyond the tenure of employment at the university.

(3) *Regular employee.* A regular employee means:

(i) An individual permanently and directly employed by the university; or

(ii) An individual in a long-term contractual relationship with the university where the individual works at the university's facilities; works under the university's direction and control; works full time and exclusively for the university; executes nondisclosure certifications for the university; and where the staffing agency that has seconded the individual has no role in the work the individual performs (other than providing that individual for that work) and the staffing agency would not have access to any controlled technology (other than where specifically authorized by a license or where a license exception is available).

(4) *Exclusions.* (i) No "technology" or source code may be released to a foreign national who is subject to a part 744 end-use or end-user control or where the release would otherwise be inconsistent with part 744; and

(ii) No "technology" controlled for "EI" (encryption) reasons or "technology" or source code controlled for "MT" (Missile Technology) reasons may be released under this paragraph (f).

(g) *Copies of technology previously authorized for export to same recipient.* This paragraph authorizes the export, reexport, or transfer (in-country) of copies of technology previously authorized for export, reexport, or transfer (in-country) to the same recipient. This paragraph also authorizes the export, reexport, or transfer (in-country) of revised copies of such technology provided the following three conditions are met:

(1) The item that the technology pertains to is the identical item;

(2) The revisions to the technology are solely editorial and do not add to the content of technology previously exported, reexported, or transferred (in-country) or authorized for export, reexport, or transfer (in-country) to the same recipient; and

(3) The exporter, reexporter, or transferor has no reason to believe the same recipient has used the technology in violation of the original authorization.

(h) *Special recordkeeping requirements:* ECCNs 2D983, 2D984, 2E983 and 2E984. In

addition to any other recordkeeping requirements set forth elsewhere in the EAR, exporters are required to maintain records, as specified in this paragraph, when exporting operation software or technology controlled under ECCNs 2D983, 2D984, 2E983, and 2E984, respectively, under License Exception TSU. Records maintained pursuant to this section may be requested at any time by an appropriate BIS official as set forth in § 762.7 of the EAR. The following information must be specially maintained for each export or reexport transaction, under License Exception TSU, of operation software and technology controlled by ECCNs 2D983, 2D984, 2E983, and 2E984:

(1) A description of the software or technology exported or reexported, including the ECCN, as identified on the CCL;

(2) A description of the equipment for which the software or technology is intended to be used, including the ECCN, as identified on the CCL;

(3) The intended end-use of the software or technology;

(4) The name and address of the end-user;

(5) The quantity of software shipped; and

(6) The location of the equipment for which the software or technology is intended to be used, including the country of destination.

[61 FR 64283, Dec. 4, 1996. Redesignated at 61 FR 68579, Dec. 30, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 740.13, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.gov).

#### § 740.14 Baggage (BAG).

(a) *Scope.* This License Exception authorizes individuals leaving the United States either temporarily (i.e., traveling) or longer-term (i.e., moving) and crew members of exporting or reexporting carriers to take to any destination, as personal baggage, the classes of commodities, software and technology described in this section.

(b) *Eligibility.* Individuals leaving the United States may export or reexport any of the following commodities or software for personal use of the individuals or members of their immediate